

Supreme Court, U. S.
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In The
Supreme Court of the United States

No.**76-256**

SUPERINTENDENT, BLAND CORRECTIONAL FIELD UNIT,
Petitioner,

v.

THOMAS EDWARD CAMPBELL,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
JUDGMENT OF THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT**

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PRELIMINARY STATEMENT

The Superintendent of the Bland Correctional Farm Unit of the Commonwealth of Virginia respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Fourth Circuit entered on May 24, 1976, in the case of *Thomas Edward Campbell v. Superintendent, Bland Correctional Farm Unit*.

OPINIONS BELOW

The memorandum opinion and judgment of the United States District Court for the Western District of Virginia, Lynchburg Division, of February 13, 1975, is included here-

in as Appendix A. The decision of the court below is included herein as Appendix B.

JURISDICTION

The jurisdiction of this Court to issue the writ of certiorari in this case is grounded upon 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Is the respondent entitled to a federal writ of habeas corpus on the grounds of illegal arrest and search and seizure, where he had a full and fair opportunity to raise the same issues and have them adjudicated at his original trial and on appeal in the state courts?

STATEMENT OF THE CASE

The respondent was convicted in the Circuit Court of Amherst County, Virginia, on November 16, 1972, of robbery and was sentenced to twenty years in the Virginia State Penitentiary. Respondent appealed his conviction to the Virginia Supreme Court and his petition for a writ of error was denied and the conviction affirmed by an Order entered June 26, 1973. One of the issues raised by respondent in his direct appeal to the Virginia Supreme Court was that his arrest was unlawful and without probable cause, and that the search conducted pursuant thereto, which uncovered incriminating evidence used against respondent at his trial, was also illegal, and the use of such evidence was a violation of his Fourth Amendment rights. The respondent also raised the issue of illegal search and seizure at his trial by way of a motion to suppress various items of evidence obtained by the police at the time of the arrest of the respondent. This motion was overruled by the trial court

judge. (See pages 67 and 186 of the transcript of respondent's trial.)

The respondent then filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Virginia alleging, among other things, illegal arrest. The District Court denied relief, and dismissed the petition for a writ of habeas corpus, on the basis that the arrest was with probable cause and not illegal, and further that the question of illegal arrest, *per se*, "is not an issue cognizable in a federal proceeding because it does not affect the actual fairness of the trial itself." The District Court did not focus on the question of illegal search and seizure, but merely referred, in its opinion, to the fact that the fruits of the crime were discovered by the police at the time of the arrest, in plain view, and as the result of a search incident to an arrest.

Respondent appealed to the Fourth Circuit, which reversed the District Court, and ordered that a writ of habeas corpus be granted to the respondent, setting aside his state court conviction. The Fourth Circuit found that various items of incriminating evidence had been found and seized at the time of respondent's arrest, and held that his arrest was illegal and without probable cause, and therefore a violation of respondent's Fourth and Fourteenth Amendment rights, and that the evidence obtained pursuant thereto should have been suppressed and excluded from his trial, citing *Mapp v. Ohio*, 367 U.S. 643 (1961).

The crime for which the respondent was convicted occurred about 10:00 p.m. on July 4, 1972, in Amherst County, Virginia, and investigation by the Sheriff's Office at the scene of the crime indicated that it had been perpetrated by a white male, a white female, and a black male. Deputy Sheriff Brockman, after investigating the scene of the crime and talking to people in the area, on July 5, 1972,

contacted the authorities in Howard County, Maryland, and gave them the license number of a car driven by an individual identified as Tommy Campbell, and advised them that he would like Campbell picked up for questioning in connection with this robbery.

The information which formed the basis of Deputy Brockman's contact to Howard County, Maryland, was information that Campbell had registered at a nearby motel on June 29, 1972, and at the time of registration had indicated that he was going to stay for a week. He registered as Tommy Campbell and wife and brother-in-law. The vehicle was identified on the registration and by the owner of the motel as a light blue Mercury with Maryland license number JC9099. These individuals were supposed to check out on July 5, 1972, but they actually had left the night of July 4, 1972, without actually checking out of the motel.

In addition to this information, the respondent had been observed and talked to at the motel at about 5:30 p.m. on July 4, 1972, by two Deputy Sheriffs. At that time he was accompanied by a girl who was identified as Joanne Poole. Outside of his room at the motel, the Deputies also observed a 1972 Mercury automobile with Maryland license number JC9099, with an individual who identified himself as Elmer "Pablo" Varchotta sitting in the vehicle. Varchotta told the Deputies that Mr. Campbell and Miss Poole were in the adjoining room.

Based upon the contact from the Sheriff's Office of Amherst County, Virginia, the Howard County, Maryland Police Department through a police look-out broadcast, and through a flyer distributed in the investigative section of the Police Department, advised all of their members that a Mr. Campbell was wanted in Virginia for armed robbery and would be operating a 1971 or 1972 Mercury with the last four digits on the license plate as 9099. Detective

Charity of the Howard County, Maryland Police Department was one of the individuals who received this information. In addition to the information referred to above, Detective Charity also had a full description of Tommy Campbell and a picture of Campbell on the flyer, and Detective Charity had also known Campbell previously. The flyer that was distributed and which Detective Charity had a copy of included some details as to the offense in Amherst County, Virginia, and as to the property taken in the robbery, and also indicated that Campbell would probably be accompanied by two males and a white female.

The vehicle in question was observed by Detective Charity on July 6, 1972, unoccupied, at a residence in Howard County, Maryland, along with another vehicle, a 1962 Ford. A surveillance was set up at this location, and subsequently that same evening the respondent, Campbell, was observed driving the Ford vehicle followed by the blue Mercury. The vehicles were stopped by Howard County, Maryland Police and the occupants were identified as Campbell, Poole, Varchotta, and an individual named Andrew Johns. At this time all of these individuals were placed under arrest by the Howard County, Maryland Police for the armed robbery in Virginia. There was no outstanding arrest warrant at that time. After Campbell had been taken into custody, the Howard County, Maryland Police Department notified and advised the Amherst County Sheriff's Department that they had Campbell in custody, and the Amherst County Sheriff's Department went to Maryland at which time Campbell signed a voluntary waiver of extradition, and he was taken into custody by the Amherst County Sheriff's Department and returned to Amherst County, Virginia, at which time an arrest warrant was taken out from the magistrate, and Campbell was formally placed under arrest for the charge of armed robbery.

LAW AND ARGUMENT

The opinion of the Fourth Circuit Court of Appeals, granting respondent federal habeas corpus relief, was entered on May 24, 1976. The basis for such relief was that the respondent's Fourth Amendment rights had been violated by an illegal arrest followed by an illegal search and seizure, through which incriminating evidence was obtained and used against respondent at his state court trial, and that such evidence should have been excluded.

On July 6, 1976, this Court decided *Stone, Warden v. Powell*, 96 S.Ct. 3037, 44 U.S.L.W. 5313 (1976), holding that "where the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

The petitioner herein submits that under *Stone v. Powell* the granting of federal habeas corpus relief to the respondent in the instant case was error, inasmuch as such relief was granted on Fourth Amendment search and seizure grounds, and the respondent had been given a full and fair opportunity to raise and have adjudicated that issue in the state courts. The respondent, at his state court trial, moved to suppress the evidence seized at the time of his arrest, on the ground that the arrest was illegal, and that the subsequent search and seizure pursuant thereto was also illegal. Such motion was ruled upon by the state trial court judge. The same issue was then raised on appeal to the Virginia Supreme Court, and the denial of a petition for a writ of error was a determination on the merits on all issues raised therein. *Saunders v. Reynolds*, 214 Va. 697, 204 S.E.2d 421 (1974). Therefore, the respondent is precluded from obtaining federal habeas corpus relief, on that very same issue,

which was the precise issue on which the Fourth Circuit granted such relief.

Furthermore, it makes no difference whether the issue is framed as one of illegal arrest or illegal search and seizure, since the objection of the respondent at trial, and of the Fourth Circuit in its opinion, was to the introduction of certain evidence. A search and seizure that is the by-product of an illegal arrest is shielded by the Fourth Amendment, see *Chimel v. California*, 395 U.S. 752 (1969), *United States v. Robinson*, 414 U.S. 218 (1973), and *Stone* precludes Fourth Amendment claims from being raised in situations such as exist in the instant case.

CONCLUSION

The petitioner submits, in light of the above, that the decision of the Fourth Circuit Court of Appeals herein is contrary to the decisions of this Court, and should be reversed and the respondent's petition for a writ of habeas corpus be denied and dismissed.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

Civil Action No. 74-C-25-L

Thomas Edward Campbell,
Petitioner

VS.

Superintendent, Bland Correctional Farm Unit,
Respondent

Opinion and Judgment
By: Ted Dalton, U.S. District Judge

Thomas Edward Campbell has filed a petition for writ of habeas corpus seeking federal relief to free him from the Bland Correctional Farm in Bland, Virginia. He is being held there pursuant to an Amherst County Circuit Court conviction for armed robbery in which a jury convicted and sentenced him to twenty (20) years in prison on November 16, 1972. He appealed this conviction to the Virginia Supreme Court but his appeal was denied on June 28, 1972. Thus petitioner is currently detained by state authorities and has exhausted his state remedies in satisfaction of the requirements of 28 U.S.C. § 2254.

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Petitioner initially filed this action in the United States District Court for the Eastern District of Virginia, Richmond Division, and by order of that court the case was transferred to this court. By order of this court petitioner was allowed to proceed *in forma pauperis* on March 28, 1974. After receiving a request from petitioner, the court on June 19, 1974, appointed counsel to represent petitioner in this action.

Petitioner has alleged four grounds as the basis of this action:

- (a) illegal arrest;
- (b) admission of evidence as to defendant's character at trial;
- (c) sufficiency of evidence—petitioner was convicted on the testimony of accomplices;
- (d) unlawful extradition.

Petitioner was convicted of armed robbery on November 16, 1972, before a jury in the Amherst County Circuit Court and sentenced to twenty years in prison. The court has before it for examination briefs by counsel for petitioner and by counsel for respondent and the record, including transcript of petitioner's trial.

After a thorough examination of the files and the transcript the court has satisfied itself that there is no ground for the granting of federal habeas corpus relief. On July 4, 1972, an armed robbery was committed in Amherst County. On July 5, 1972, the Howard County Police Department (Howard County, Maryland) was notified by the Amherst County Police Department to be on the lookout for Thomas Edward Campbell as he was wanted in Amherst County for questioning in connection with the armed robbery. An

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accurate description of Campbell and the car he was driving was provided the Howard County Police.¹ Acting upon this description the Howard County Police Department was able to apprehend Campbell on July 6. That same day an officer from the Amherst County Police Department came to Howard County and brought Campbell back to Amherst County. An arrest warrant was subsequently issued on this same day, July 6, 1972, and Campbell was indicted by a grand jury during October 1972.

Petitioner makes two allegations concerning the events which transpired before his trial: (a) that the arrest by the Howard County Police was illegal because it was warrantless and (b) that his extradition was also illegal even though petitioner waived extradition; petitioner's latter claim rests on the premise that since he was not legally under arrest at the time of his extradition, there was nothing that he could have waived.

After studying the "flyer" which the Amherst County Police sent to the Howard County Police, the court finds that based upon this information, its source and its accurate descriptive detail, the Howard County Police did have the legal probable cause necessary to legitimately arrest petitioner. In doing so they discovered the fruits of the crime which were in plain view at that time and were the result of a search incident to an arrest. Moreover, this court has previously stated that "an illegal arrest *per se* is not an issue cognizable in a federal proceeding because it does not affect the actual fairness of the trial itself." (*Law v. Cox*, 329 F.Supp. 849 (W.D. Va. 1971). See also *United States ex rel*

¹ The description detailed Thomas Edward Campbell as a white male with black hair and brown eyes, born 11-16-41, six feet tall, 230 pounds, operating a baby blue 1971-1972 Mercury Montego—last four digits on Maryland license plates—9099. A picture of Campbell was also included.

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Orsini v. Reincke, 286 F.Supp. 974 (D. Conn.), *aff'd* 397 F.2d 977 (2d Cir. 1968), *cert. denied* 393 U.S. 1050, 89 S.Ct. 689, 21 L.Ed.2d 692 (1969).)

Whether or not the extradition was lawful is another allegation which the court will not determine in this proceeding. The Supreme Court held in *Frisbie v. Collins*, 342 U.S. 519 (1952):

"that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of 'forcible abduction' There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.

In *Frisbie*, the court denied a writ of habeas corpus to a petitioner who had been kidnapped by police officers to Michigan from Illinois.

Petitioner's final two allegations concern evidentiary questions. He asserts that his character was improperly put into evidence by allowing a police officer who was testifying to refer to a "mug shot" of the petitioner. Regardless of the fact that the police officer did refer to a "mug shot" of petitioner, the trial judge made a cautionary statement² to the jury (Tr. 49). The Fourth Circuit has held that admissibility of evidence, sufficiency of evidence and instructions to the jury in state trials are matters of state law and procedure not involving constitutional issues, and only when such matters impugn fundamental fairness of the trial is a

² The court stated to the jury:

"This witness who has identified himself as a police officer from Maryland has testified that he had a picture of this defendant on file up there. Now the court is telling you and instructing you that that is not to be considered by you in anyway in reflecting on whether or not he is guilty or innocent of this charge."

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federal question presented, *Grundler v. State of North Carolina*, 283 F.2d 798 (4th Cir. 1960). Since the trial judge cautioned the jury, this court finds that this reference to petitioner's character did not impugn the fairness of the trial.

Petitioner's final allegation claims that the testimony of accomplices was an improper basis upon which to convict him. However, the transcript reveals that this testimonial evidence was not the sole basis upon which a jury could have based its verdict. Moreover, the trial court gave a typically cautionary jury instruction concerning the suspect nature of testimony by accomplices.³ For these reasons and based upon the *Grundler* rationale, the court finds no basis for federal habeas corpus relief as to this allegation.

After consideration of each of petitioner's allegations the court finds no basis for granting relief. Accordingly the court grants respondent's motion for summary judgment and orders the case dismissed and stricken from the docket. Petitioner is advised that he may appeal the judgment of this court within thirty (30) days to the United States Court of Appeals for the Fourth Circuit.

The clerk is directed to send a certified copy of this opinion and judgment to counsel for petitioner and to counsel for respondent.

Enter:

/s/ Ted Dalton
United States District Judge
February 13, 1975

* * *

³ Instruction "D" read:

"The court instructs the jury that while they may find a verdict upon the unsupported testimony of an accomplice, such evidence is to be received with great caution and the court warns the jury of the damage of basing a verdict on the unsupported testimony of the accomplice or accomplices."

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APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-1533

Thomas Edward Campbell,
Appellant,
versus
Superintendent, Bland Correctional Farm Unit,
Appellee.

Appeal from the United States District Court for the
Western District of Virginia, at Lynchburg, Ted Dalton,
District Judge.

Submitted February 26, 1976 Decided May 24, 1976

Before Haynsworth, Chief Judge, Boreman, Senior Circuit
Judge, and Winter Circuit Judge

(Thomas Edward Campbell, Appellant, Pro Se; Gilbert W.
Haith, Assistant Attorney General, for Appellee.)

Per Curiam:

Thomas Edlward Campbell was convicted of robbery by
force in the Circuit Court of Amherst County in Virginia
in 1972.¹ At his trial Campbell argued that there was neither

¹ He was sentenced to a term of imprisonment for twenty years.

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probable cause for his arrest nor for the search of his car. The trial court overruled his motion to suppress, upholding the constitutionality of both arrest and search incident to the arrest. On appeal, the Supreme Court of Virginia affirmed.

Campbell then petitioned the federal district court for a writ of habeas corpus. The district court denied the petition on February 13, 1975 and later denied a certificate of probable cause to appeal. We grant the certificate of probable cause to appeal, reverse the judgment of the district court and order that the writ be issued unless the State takes appropriate steps to retry petitioner.

The facts relating to the arrest and to the incidental search and seizure are clear. On the evening of July 4, 1972, a male and female knocked on the door of Evelyn Crawford's home, which adjoined her store. The two young people informed her that they were experiencing car trouble and asked if they might use her telephone. She agreed and opened her door. As she did so, a third person, a young black male brandishing a pistol, entered also. Ms. Crawford was gagged and blindfolded. The robbers then took her money, which included a large quantity of silver dollars, two dollar bills, fifty cent pieces, silver certificates, and odd change.

Ms. Crawford immediately notified the Amherst County Sheriff's Department of the robbery. The department commenced an investigation. Ms. Crawford did not recognize the three young intruders, but the department knew Thomas Campbell was a native of Amherst County and knew that he was in the area on the day of the robbery. In fact, on the afternoon of July 4, merely a few hours before the robbery, a deputy sheriff from Amherst County and one from Campbell County had spoken with the petitioner at a motel in Amherst County. The officers also met a young female

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who was in the room with Campbell and a young male sitting in a light blue 1972 Mercury with Maryland license number JC-9099.

With only this information to go on, the Amherst County Sheriff's Department sent a bulletin to the Howard County Police Department in Maryland. That department circulated a flyer describing the petitioner and the auto in great detail and alerting officers to the fact that the petitioner and his auto were believed to be involved in an armed robbery. The flyer specified that "no wanted at this time" and directed that a "full field interrogation report and wanted check should be run on all occupants."

On July 5, 1972, the petitioner and the blue Mercury were spotted. Around midnight five persons, including the petitioner, who were riding in two autos, were stopped, removed from the autos, and placed under arrest for armed robbery. Neither an arrest warrant nor a search warrant had been obtained in Maryland or Virginia.

The officers which conducting a subsequent search of the two autos seized two bags of coins and a search of the suspects turned up other amounts of cash and coins.

The defendants were extradited to Virginia. At trial the evidence concerning the arrest of petitioner and his companions and the search of the cars was introduced into evidence. In addition, the victim, Ms. Crawford, testified about the robbery, but she was unable to identify the petitioner. However, three of the persons arrested with him testified that they participated in the crime. They directly implicated the petitioner as the perpetrator of the robbery and disclosed that he was an actual participant. The petitioner offered the testimony of a witness who declared that he saw and spoke with the petitioner at the motel at about the time of the robbery.

The constitutional validity of the search and seizure in the

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instant case, of course, depends upon the constitutional validity of petitioner's arrest. In turn, whether the arrest was constitutionally valid depends upon whether the officers, at the time of the arrest, possessed knowledge of facts and circumstances which were sufficient to warrant a prudent man in believing that the petitioner had committed an offense. *Henry v. United States*, 361 U.S. 98, 102 (1959), *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949). On these facts, we must look to the information known by the Amherst County Sheriff's Department, to the information transmitted to the Howard County Police Department, and to any information independently acquired by the Howard Police Department in order to determine whether a reasonable ground for belief of guilt existed upon which to found probable cause.

This case is nearly identical to that of *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560 (1971). In *Whiteley*, a sheriff, acting on an unnamed informer's tip, made out a complaint charging the defendant and another with breaking and entering into a building the previous night. A justice of the peace issued an arrest warrant for both men on the basis of the conclusory allegations which appeared in the complaint. A police bulletin was transmitted giving the names and descriptions of the suspects and advising as to the type of car probably being driven and the amount of money taken. A patrolman in another part of the state stopped a car which fit the description and which contained two men in it. The defendant gave a false name but he matched the description given in the police bulletin and the other person was known to the patrolman by name. The patrolman, consequently, arrested both men, and incidental to the arrest, he conducted a full search. The evidence seized in the search was admitted at the trial and led to the defendant's conviction.

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The Supreme Court found that neither the sheriff's bald complaint nor any information possessed by the arresting patrolman, nor both, when considered together constituted probable cause for the arrest. The Court simply concluded that an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest. *Whiteley v. Warden*, supra, at 568.

In the instant case, the Amherst County Sheriff's Department knew that petitioner, along with a female and male companion, had a room at a local motel a few hours before the crime, knew that the three were using a blue 1972 Mercury with a Maryland license plate, and presumably knew that the three were gone from the motel after the crime. The record discloses nothing more. The Howard County Police possessed no additional information.

From the record facts, we must conclude that there was not probable cause for the officers to arrest the petitioner. Thus, petitioner's arrest violated his constitutional rights under the Fourth and Fourteenth Amendments, and the evidence secured by the search incident to that unlawful arrest should have been excluded from his trial. *Mapp v. Ohio*, 367 U.S. 643 (1961).

Accordingly, we grant a certificate of probable cause to appeal, reverse the judgment of the district court and order that the writ issue.

Reversed.